

**IN THE UNITED STATES DISTRICT COURT
FOR NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

NICK PEARSON, On Behalf of Himself and All
Others Similarly Situated,

Plaintiff,

vs.

TARGET CORPORATION, a Minnesota
Corporation,

Defendant.

Case No. 11cv07972

Honorable James B. Zagel

Magistrate Judge Jeffrey T. Gilbert

**DEFENDANT'S NOTICE OF SUPPLEMENTAL AUTHORITY IN SUPPORT OF ITS
MOTION TO DISMISS THE FIRST AMENDED CLASS ACTION COMPLAINT**

Defendant Target Corporation (“Target”) submits this Notice of Supplemental Authority in further support of its motion to dismiss Plaintiff’s First Amended Class Action Complaint (“the Complaint” or “Cmplt.”) [D.E. 21] with prejudice pursuant to Federal Rules of Civil Procedure 8, 9(b) and 12(b)(6). [D.E. 28-30, 52].

On November 1, 2012, the court in *Eckler v. Wal-Mart Stores, Inc.*, 3:12-cv-00727 (S.D. Cal. Mar. 26, 2012) issued an opinion and order dismissing pursuant to Rules 8 and 12(b)(6) Eckler’s claims of consumer fraud and breach of warranty (without prejudice, and with prejudice, respectively) related to the purchase of a nutritional supplement containing glucosamine and chondroitin. Counsel to the plaintiff in *Eckler* is also counsel to Plaintiff here, and counsel to the defendant in *Eckler* (Drinker Biddle & Reath LLP) is also co-counsel to Defendant here.

The court in *Eckler* dismissed the consumer fraud claims on the basis that the plaintiff’s reliance on osteoarthritis studies did not state a plausible claim. Slip Opinion at 12:10-16

(“Ultimately, the Court cannot accept that the studies Eckler cites lend ‘facial plausibility’ to her claims that the Equate representations are false or misleading. *See Iqbal*, 556 U.S. at 678. The studies allegedly show that glucosamine doesn’t alleviate the symptoms of osteoarthritis in the hip and knee. That is a very particular showing with respect to a degenerative joint disease, and in the Court’s judgment it doesn’t address the far more general claim—which *is* made by the Equate representations—that glucosamine is good for the body’s joints.”); *id.* at 15:6-9 (“What do studies showing that glucosamine doesn’t alleviate the symptoms of osteoarthritis in the hip and knee have to do with the representations of a dietary supplement, explicitly *not* intended to treat a disease, that it is formulated to support joint comfort, rebuil[d] cartilage, and lubricate joints?”). That reasoning adopts arguments made by Target in this case in its Opening Brief at pages 9-12 [D.E. 30] and in its Reply Brief at pages 1-8 [D.E. 52].

A copy of the opinion and order is attached hereto as Exhibit A.

Dated: November 2, 2012

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Respectfully submitted,

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